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Tax Alert



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Hillary Clinton Disses Uber And On-Demand Economy

Hillary Clinton has [outlined her economic policies](#), expressing worry over companies like Uber and other growing companies that [rely on contract workers](#). She may be the Democratic front-runner, but she characterizes the on-demand economy as committing wage theft. It is a serious accusation, with [early reports](#) suggesting she leans toward making workers employees so the government can protect them.

Mrs. Clinton has called for higher wages, pay equality, and other labor measures to help the middle class. Although some observers have called her attack on the on-demand economy a gaffe, it is not yet clear how the average American will react to her move. What is clear is that some candidates are hoping Mrs. Clinton's old-fashioned tax and spend rhetoric will hurt her. Republican Sen. Rand Paul quickly blasted the former Secretary of State on Twitter over her [questioning the economic model of the "gig" economy](#).



@Waywire

Sen. Paul noted that Mrs. Clinton does not need Uber herself, given her Secret Service detail and her admission that [she hasn't driven her own car since 1996](#)! Of course, Uber, Lyft and scores of other companies can get in plenty of trouble over worker status issues without any help from Mrs. Clinton. The granddaddy of these 'problem' companies is Uber, which faces multiple suits from injured parties.

Then there are the suits from drivers themselves claiming they *really* work for Uber as employees. A panoply of taxes, fringes and liabilities are at stake. The recent [ruling by California's Labor Commission](#) that one Uber driver is an employee could be the shot heard round the world. Of course, Uber has appealed and has said it did not exert any control over the driver.

But California's Labor Commission said Uber is "involved in every aspect of the operation," from vetting drivers and their vehicles to setting rates for trip fares. The Commission said Uber controls the tools driver use, monitors their approval ratings and terminates their access to the system if their ratings fall below 4.6 stars. And Florida is active too, where a state agency also ruled that [Uber drivers are employees](#). A common formula considers such basics as:

- The employer's control over the worker;
- The worker's opportunity for profit or loss;
- The worker's investment in facilities;
- The worker's skill set; and
- The duration of the relationship.

Uber promises good open-ended pay, flexible hours, even discounts on vehicles. But employee status? No way. Health and dental coverage? Tax withholding? Nope. The battle over the independent contractor versus employee designation has been underway for decades, and extends beyond ride-sharing companies. [It's been a long-running issue at FedEx](#), which operates with a similar contractor setup with its ground delivery drivers. That's brought class-action lawsuits, and efforts to change state laws to put liabilities on the companies.

Uber and Lyft [now face similar suits](#). Uber's latest [\\$1.2 billion in financing](#) and more than \$40 billion valuation make it a valuation darling, but the tax and legal exposure of the company may be growing along with its valuation. Apart from taxes, benefits, workers' comp and unemployment, there is potential accident liability. When a driver has an accident that injures a passenger or third party, there is recourse to the drivers and their insurance.

But a serious or fatal accident can involve millions, far exceeding driver insurance policies. Uber is a clear target, unless the [Communications Decency Act of 1996](#) prevents liability. But it is not far-fetched to imagine verdicts for injured plaintiffs, no matter how the legal niceties are observed. With taxi companies and in many other industries, the law has been sorting out similar issues for

decades. The contracts and the actual course of conduct of the parties are likely to count.

[Independent contractor vs. employee characterization](#) questions span medical malpractice cases, tax disputes, worker compensation and unemployment matters and more. Even employment discrimination and sexual harassment cases. As many tax, employment, insurance and labor disputes reveal, workers labeled as independent contractors may be employees. Arrangements can be genuine or can be independent in name only, with no chance of standing up against the IRS, other agencies or the courts.

The IRS and state taxing agencies could benefit nicely by getting tax withholding money from Uber on pay to the drivers. And while it is by no means certain that the IRS and state tax agencies will try, it is not certain they will not. With Uber's vast valuation, expect more lawsuits. As with franchises, Uber may test the legal limits.

Workers may be labeled as "independent contractors," but labels aren't enough. Uber has roiled the marketplace. But taxing and employment agencies that stand to make money off employees and not off independent contractors are likely to be watching. So, apparently, is Hillary Clinton.

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